DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH Petitioner, v. KENNEDY CENTER Respondent	Case No.: I-00-11212

ORDER DENYING MOTION FOR STAY

I. Introduction

On July 31, 2001, Respondent filed a Notice of Appeal of the July 19, 2001 order in this case. Based upon Respondent's plea of Admit with Explanation, that order imposed a fine of $175.00 for Respondent's violation of 20 DCMR 900.1, which prohibits, with certain exceptions, motor vehicles from idling their engines for more than three minutes while parked, stopped or standing. Respondent has requested a stay of the order pending appeal. In support of that request, Respondent argues that it is a "non-profit agency" and that it was "providing a free service to its patrons including its elderly and physically handicapped patrons" when it committed the violation.

II. The Applicable Standard

Discretion to issue a stay pending appeal in a civil infraction case is granted by D.C. Code § 6-2713(g), which provides: "Upon request of the respondent, the administrative law judge or attorney examiner may stay the imposition of any sanction imposed pending administrative review." The Court of Appeals has held that an administrative judge considering a stay application must apply the same standard applied by the courts. That standard requires a balancing of four factors: "whether the movant [is] likely to succeed on the merits, whether denial of the stay [will] cause irreparable injury, whether granting the stay [will] harm other parties, and whether the public interest favors granting a stay." *Kuflom v. District of Columbia Bureau of Motor Vehicle Services*, 543 A. 2d 340, 344 (D.C. 1988). If the other three factors strongly favor granting a stay, the moving party need not show a "mathematical probability" of success on the merits; only a "substantial" showing of likely success is required. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), *quoting Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F. 2d 841, 843 (D.C. Cir. 1977). The court in *Washington Metropolitan Transit Commission* explained that, in considering the "likelihood of success" factor a court need not make "a prediction that it has rendered an erroneous decision" before staying its order. *Id.* at 844. "What is fairly contemplated is that tribunals may properly stay their own orders when they have ruled on an admittedly difficult legal question and when the equities of the case suggest that the status quo should be maintained." *Id.* at 844-45.

III. Evaluation of the Relevant Factors

A. Irreparable Harm

Respondent does not identify any irreparable harm that will occur if the order is not stayed. Ordinarily, an order to pay money will not result in irreparable harm because the party seeking a stay can obtain a refund if it ultimately prevails on appeal. *See, e.g., National Ass'n of Criminal Defense Lawyers v. United States Dep't of Justice,* 182 F.3d 981, 985 (D.C. Cir. 1999). Because Respondent will be able to recover its $175 payment if it prevails on appeal, a stay is not necessary to prevent the occurrence of irreparable injury.

B. Harm to the Opposing Party

The Government's interest in prompt enforcement of the District's air pollution control laws will be impaired somewhat if a stay is granted. Delayed compliance will lessen the deterrent effect of the sanction.

C. The Public Interest

Respondent has not shown that the public interest favors the grant of a stay. In particular, nothing in the July 19 order requires Respondent to discontinue its shuttle bus service. Respondent's explanation, filed with its plea on June 29, 2001, shows that compliance with the engine idling regulation is not incompatible with the operation of that service:

> Now that we have a better understanding of the District Health law, I have advised our drivers to idle at the 23rd Street stop no longer than three minutes. The drivers have been asked to turn the vehicles off if the circumstances require the buses to wait at the stop longer than three minutes.

I gave considerable weight to that assurance of future compliance in reducing the fine in this case from $500.00 to $175.00. Thus, a stay is not necessary to guarantee that the shuttle bus service will continue.

D. Likelihood of Success on the Merits

Because Respondent pleaded Admit with Explanation to the Notice of Infraction, there is no question as to its liability for violating 20 DCMR 900.1. The only issue in the case is whether the fine imposed is appropriate. Respondent is unlikely to succeed on appeal of that issue due to the limited scope of appellate review: "A reviewing agency may not modify a monetary sanction imposed by an administrative law judge or attorney examiner if that sanction is within the limits established by law or regulation." D.C. Code § 6-2723. Because of that standard of review, Respondent also has not satisfied the less demanding "substantial showing" standard of *Washington Metropolitan Transit Commission*.

III. Conclusion

None of the relevant factors favors the granting of a stay pending appeal. Accordingly, in the exercise of the discretion granted by D.C. Code § 6-2713(g), Respondent's motion will be denied.

IV. Order

Based upon the foregoing discussion and the entire record in this matter, it is, this _____ day of _____, 2001:

ORDERED, that Respondent's motion for stay pending appeal is **DENIED.**

/s/ 8/8/01
_____
John P. Dean
Administrative Judge